OCT 5 1923
WM. R. STANSBURY

Supreme Court of the United States

OCTOBER TERM, 1923

No. 74

SALEM TRUST COMPANY,
Appellant

v.

MANUFACTURERS' FINANCE COMPANY

AND

INTERNATIONAL TRUST COMPANY
Appellees

BRIEF FOR APPELLANT

ALEXANDER WHITESIDE,
Counsel for Appellant

ARTHUR DRINKWATER,
RAYMOND P. BALDWIN,
Of Counsel

PRESS OF GEO. H. ELLIS CO. (INC.) BOSTON

SUBJECT INDEX

	PAGE
TABLE OF CASES AND STATUTES	ii
STATEMENT OF CASE	1
FACTS	2
SPECIFICATION OF ERRORS	5
QUESTIONS	6
SUMMARY OF ARGUMENT	6
ARGUMENT	7
CONCLUSION	37

TABLE OF CASES

PAGE

American Brake Shoe & Foundry Co. v. *New York Railways Co.*, 278 Fed. 842 31
American Trading Co. v. *Steele*, 274 Fed. 774 (C. C. A. 9th Circ.) 33
Anderson v. *Gray*, 284 Fed. 770 (C. C. A. 5th Circ.) 31
Atherton v. *Beaman*, 264 Fed. 878 (C. C. A. 1st Circ.) . . . 30
Atherton, J. M. Co. v. *Ives*, 20 Fed. 894 31
Bacon v. *Northwestern Life Insurance Co.*, 131 U. S. 258 . . 32
Bailey v. *Baker Ice Machine Co.*, 239 U. S. 268 30
Balkam v. *Woodstock Iron Co.*, 154 U. S. 177 32
Barnes v. *Alexander*, 232 U. S. 117 30
Beale's Cases on Conflict of Laws (1902 Ed.), Summary . . 15
Benedict, Receiver v. *Aaron Ratner*, 259 U. S. 579 . . . . 35, 36
Berlet v. *Lehigh Valley Silk Mills*, 287 Fed. 769 (C. C. A. 3d Circ.) 30
Black's Law of Judicial Precedents, Sec. 149 17
Brant v. *Swofford Bros.*, 214 U. S. 279 30
Brown v. *Grand Rapids Parlor Furniture Co.*, 58 Fed. 286 (C. C. A. 6th Circ.) 30
Bucher v. *Cheshire R.R. Co.*, 125 U. S. 555 32
Clarke v. *Clarke*, 178 U. S. 186 31
Coleman & Co. v. *Tawas & Co.*, 250 U. S. 668 34
Commonwealth S.S. Co. v. *American Shipbuilding Co.*, 197 Fed. 780 31
5 Corpus Juris, 971-973 36
Crampton v. *Lautz Bros. & Co. Inc.*, 274 Fed. 743 33
Dale v. *Pattison*, 234 U. S. 399 30
Davis v. *Mills*, 99 Fed. 39 31
Dearle v. *Hall*, 3 Russ. 1 . . . . . 22, 24, 25
DeVaughn v. *Hutchinson*, 165 U. S. 566 31
Dennick v. *Railroad Co.*, 103 U. S. 11 32

PAGE

Detroit v. *Osborne*, 135 U. S. 492 32
Dixon, Joseph Crucible Co. v. *Paul*, 167 Fed. 784 (C. C. A. 6th Circ.) 30
Dooley v. *Pease*, 180 U. S. 126 30
East Central Eureka Mining Co. v. *Central Eureka*, 204 U. S. 266 31
Easton v. *Houston & T. C. Ry. Co.*, 32 Fed. 893 32
Etheridge v. *Sperry*, 139 U. S. 266 30
Fargason, J. T. v. *Furst*, 287 Fed. 306 (C. C. A. 8th Circ.) . 32
Farmers and Merchants Bank v. *Farwell*, 58 Fed. 633 (C. C. A. 8th Circ.) 22
First National Bank of Evanston v. *Bank of Waynesboro*, 262 Fed. 754 (C. C. A. 8th Circ.) 30
Forsyth v. *Hammond*, 166 U. S. 506 32
Fortunato v. *Patten*, 147 N. Y. 277 11
Foster v. *Cockerell*, 3 Cl. & F. 456 . . . . . 22, 24, 25
Greey v. *Dockendorff*, 231 U. S. 513 . . . . . 10, 26, 36
Hamilton v. *David C. Beggs Co.*, 179 Fed. 949 31
Hamilton-Brown Shoe Co. v. *Wolf Bros.*, 240 U. S. 251 . . . 34
Hartford Fire Insurance Co. v. *Chicago, Milwaukee & St. Paul Ry. Co.*, 175 U. S. 91 32
Herman v. *Conn. Mutual Life Insurance Co.*, 218 Mass. 181 . 14
Highland Park Mfg. Co. v. *Steele*, 232 Fed. 10 (C. C. A. 4th Circ.) 31
Hiscock v. *Varick Bank of New York*, 206 U. S. 28 30
Horn Silver Mining Co. v. *N. Y.*, 143 U. S. 305 15
Humphrey v. *Tatman*, 198 U. S. 91 30
In re Ames, 283 Fed. 465 30
In re American Steel Supply Syndicate, 256 Fed. 876 31
In re Ballard, 279 Fed. 574 31
In re Codman, 284 Fed. 273 33
In re Hawley Down-Draft Furnace Co., 233 Fed. 451 . . . 23, 24
In re Hawley Down-Draft Furnace Co., 238 Fed. 122 (C. C. A. 3d Circ.) 11, 24, 30
In re Hub Carpet Co., 282 Fed. 12 (C. C. A. 2d Circ.) . . 30, 35
In re Jarnol, 283 Fed. 547 32
In re Leterman, Becher & Co., 260 Fed. 543 . . . . 19, 29, 34, 35
In re Nader, 276 Fed. 123 31
Irwin v. *Maple*, 252 Fed. 10 (C. C. A. 6th Circ.) 32

PAGE

Joseph Dixon Crucible Co. v. *Paul*, 167 Fed. 784 (C. C. A. 6th Circ.) 30
Judson v. *Corcoran*, 17 How. 612 20
Klinger v. *Hyman*, 223 Fed. 257 (C. C. A. 2d Circ.) 30
Knapp, Stout & Co. v. *McCaffrey*, 177 U. S. 638 30
Kuhn v. *Fairmount Coal Co.*, 215 U. S. 349 31
Laclede Bank v. *Schuler*, 120 U. S. 511 21
Lewis v. *Herrera*, 208 U. S. 309 32
Lloyd v. *Fulton*, 91 U. S. 479 31
Loveridge v. *Cooper*, 3 Russ. 30 . . . . . 24, 25
Lubriko Co. v. *Wyman*, 290 Fed. 12 (C. C. A. 3d Circ.) . . . 33
Methven v. *Staten Island Light, Heat & Power Co.*, 66 Fed. 113 . . . . . 19, 29, 35
Midway Irrigation Co. v. *Snake Creek*, 271 Fed. 157 (C. C. A. 8th Circ.) 31
Miller v. *Ammon*, 145 U. S. 421 32
Missouri, Kansas, etc., Trust Co. v. *Krumseig*, 127 U. S. 351 . 32
Mutual Development Co. v. *Kentucky Coal Lands Co.*, 285 Fed. 761 31
McMullen v. *Zabawski*, 283 Fed. 552 31
Nichols v. *Atchison, Topeka & Santa Fe Ry.*, 286 Fed. 1 (C. C. A. 9th Circ.) 32
Percy Summer Club v. *Astle*, 163 Fed. 1 (C. C. A. 1st Circ.) . 31
Petition of National Discount Company, 272 Fed. 570 . . . 11, 27
Pickens v. *Merriam*, 274 Fed. 1 (C. C. A. 9th Circ.) 31
Putnam v. *Story*, 132 Mass. 205 . . . . . 10, 14
Rabinowitz v. *People's Nat'l Bank*, 235 Mass. 102 14
Railroad Co. v. *Georgia*, 98 U. S. 359 32
Randolph v. *Quidnick Co.*, 135 U. S. 457 30
Sanduski Cement Co. v. *A. R. Hamilton & Co.*, 273 Fed. 596. 32
Schreyer v. Scott, 134 U. S. 405 31
Sexton v. *Kessler*, 225 U. S. 90 30
Shaffer v. *Carter*, 252 U. S. 37 15
Snare & Triest Co. v. *Friedman*, 169 Fed. 1 (C. C. A. 3d Circ.) 32
Spain v. *Hamilton's Administrator*, 1 Wall. 604 . . . . . 20, 21
Sturtevant, B. F. Co. v. *Fidelity & Deposit Co. of Maryland*, 285 Fed. 367 (C. C. A. 2d Circ.) 33
Taney v. *Penn Bank*, 232 U. S. 174 30
Thayer v. *Daniels*, 113 Mass. 129 . . . . . 11, 14

PAGE

The Elmbank, 72 Fed. 610 . . . . . 22, 23
Theological Seminary v. *Illinois*, 118 U. S. 662 32
Third National Bank of Atlantic City, 126 Fed. 413 23
Third National Bank of Atlantic City, 130 Fed. 751 23
Thompson v. *Fairbanks*, 196 U. S. 516 30
Townsend v. *Todd*, 91 U. S. 452 32
Triumph Electric Co. v. *Patterson*, 211 Fed. 244 (C. C. A. 8th Circ.) 30
Union Trust Co. v. *Bulkley*, 150 Fed. 510 (C. C. A. 6th Circ.) 30
Warburton v. *White*, 176 U. S. 484 32
Ward v. *Duncombe*, 1893 A. C. 369 25
Wells v. *Brown*, 255 Fed. 852 (C. C. A. 8th Circ.) 31
Whitaker v. *McBride*, 197 U. S. 510 31
York Mfg. Co. v. *Cassell*, 201 U. S. 344 32

STATUTES

PAGE

General Laws of Massachusetts, C. 231, sec. 5 11
Revised Laws of Massachusetts, C. 173, sec. 4 11

Supreme Court of the United States

OCTOBER TERM, 1923

No. 74

THE SALEM TRUST COMPANY, *Appellant*

v.

MANUFACTURERS' FINANCE COMPANY

AND

INTERNATIONAL TRUST COMPANY, *Appellees*

BRIEF FOR THE APPELLANT

STATEMENT OF THE CASE

This case comes before this Court upon a writ of certiorari granted October 26, 1922, to review a decision of the Circuit Court of Appeals for the First Circuit rendered April 11, 1922. The questions presented are:—

1. Whether the proceeding was erroneously removed from the Superior Court of the Commonwealth of Massachusetts to the District Court of the United States for the District of Massachusetts:—

   (*a*) because of the fact that the money which was the subject of controversy in the proceeding was in the International Trust Company of Boston, a citizen of Massachusetts, in a special deposit standing in the name of the Appellee as Trustee under an agreement that it should be so held pending the determination

by a court of competent jurisdiction of the question as to which of the parties was entitled to the money; (*b*) because of the fact that under the terms of the agreement by which the money was held, the Appellant had the right to sue in the State Court of Massachusetts.

2. The priority of the rights of successive assignees of the same account receivable, both assignments being for value, the later assignee taking its assignment without inquiry of the debtor and without notice to the debtor until long after the date of the assignment, its notice given then being prior to that of the earlier assignee.

FACTS

The Appellant, a trust company organized under the laws of Massachusetts, on May 16, 1919, lent a large sum of money to the Nelson Blower & Furnace Company, a Massachusetts corporation, receiving as security, an assignment by the Nelson Blower & Furnace Company, of accounts receivable owed to it by the Murray & Tregurtha Corporation, also a Massachusetts corporation. The three parties concerned in this assignment were all citizens of Massachusetts, and the money owing was to be paid in Massachusetts (Record, pp. 16, 17 and 29).

Subsequently, namely, on or about July 15, 1919, the Nelson Blower & Furnace Company borrowed a large sum of money from the Appellee, Manufacturers' Finance Company, a Delaware corporation, but one having a usual place of business in Boston, Massachusetts, being permitted, after compliance with the Massachusetts laws, to do business in Massachusetts, and as security, assigned to said Appellee the same accounts previously assigned to the Appellant. Said Appellee took the assignment without, so far as appears, inquiring of the Murray & Tregurtha Corporation as to whether notice had been given to it of any previous assign-

ment, and without, so far as appears, relying upon any knowledge except that furnished by the assignor or in any way being influenced in its conduct by the failure of the Appellant to give notice of its assignment to the Murray & Tregurtha Corporation (Record, pp. 16, 17 and 32).

On or about September 20, 1919, about one week before the Nelson Blower & Furnace Company was placed in the hands of a receiver, the Manufacturers' Finance Company notified the Murray & Tregurtha Corporation of the assignment made to it, of the accounts receivable (Record, p. 16).

The rival assignees agreed with each other that the Nelson Blower & Furnace Company, acting by its receiver, should finish the work being done for the Murray & Tregurtha Corporation, and that the net proceeds, amounting to $7,963.36 (less than the amount of the claim of either assignee), should be deposited in the Appellee, International Trust Company (a Massachusetts corporation having a usual place of business in Boston, Massachusetts), in a special deposit standing in the name of the Manufacturers' Finance Company, as trustee, pending the determination by a Court of competent jurisdiction of the question as to which assignee was entitled to such proceeds (Record, pp. 17–19).

The agreement between the Appellant and the Manufacturers' Finance Company, Appellee, by which the latter was given authority to collect the accounts assigned and hold the proceeds as Trustee pending a determination of the rights of the two parties therein, appears on pages 18 and 19 of the Record.

The clause of that agreement relative to the disposition of the proceeds reads as follows:—

> "6. If the parties hereto shall not be able to agree upon the ownership of the proceeds of any of such accounts, then the question of such ownership shall be determined by a proper proceeding or proceedings in some Court of competent jurisdiction, which pro-

ceeding or proceedings may be brought by either party hereto at any time" (Record, p. 19).

In accordance with the agreement, the Appellant brought a Bill in Equity in the Superior Court for the County of Suffolk, Commonwealth of Massachusetts, against the Manufacturers' Finance Company and the International Trust Company, and the Manufacturers' Finance Company filed a Motion that the suit should be removed to the District Court of the United States for the District of Massachusetts, and against the objection of the Appellant, the suit was so removed. It was heard by Anderson, J., and dismissed by a Final Decree entered May 6, 1921 (Record, pp. 1-3, 8, 9, 14 and 20).

Thereafter, upon appeal by the Appellant, the United States Circuit Court of Appeals for the First Circuit, by a decision handed down on April 11, 1922, affirmed the decree of the District Court with costs to the Manufacturers' Finance Company, Appellee (Record, pp. 26-28 and 39). A dissenting opinion was rendered by Brown, J. (Record, pp. 28-38).

On June 6, 1922, the Appellant represented that it intended to file a petition to this Court for a writ of certiorari and moved that the issue of the mandate be stayed, and having subsequently complied with the rules and regulations of the Court, and filed in this Court a petition for certiorari, that petition was granted October 26, 1922 (Record, pp. 39-41).

It clearly appears in the proceedings, and has not been denied, that the parties to the first assignment were both citizens of Massachusetts, that the debtor owing the accounts assigned was a citizen of Massachusetts, that the assignment was made in Massachusetts, and that the money owed was payable in Massachusetts. It further appears that the second assignment was made in Massachusetts, by a citizen of Massachusetts, of an account owed by a citizen of Massachusetts, and payable in Massachusetts,

but that the assignee was a citizen of Delaware (a corporation actually having a place of business in Massachusetts, having complied with the laws of Massachusetts, permitting it to do business therein).

SPECIFICATION OF ERRORS RELIED UPON

The Appellant relies upon the following assignments of errors:—

1. That the Court erred in dismissing the complaint.
2. That the Court erred in refusing to rule that, upon all the evidence, the plaintiff is entitled to the relief prayed for in its bill.
3. That the Court erred in holding, in substance, that the Federal rule with respect to priority of claim as between successive assignees of the same non-negotiable chose in action, is the English rule, so-called; and that there must consequently be a decree for the defendant Manufacturers' Finance Company.
4. That the Court erred in refusing to rule that, the assignment to the plaintiff being prior in point of time to those to the Manufacturers' Finance Company, the plaintiff is entitled to recover the amount on deposit in the defendant International Trust Company by virtue of the provisions of the agreement, Exhibit 1, annexed to the agreed facts.
5. The Court erred in refusing to rule that the Nelson Blower & Furnace Company having sold all its interest, to the extent of $45,000, in payments due and to become due it under its contract with the Murray & Tregurtha Corporation to build thirty marine engines, had no interest therein left to assign to the Manufacturers' Finance Company on July 21 and September 20, 1919, unless it was the excess, if any, of the amount due or to become due said Nelson Company over the above said $45,000.
6. That the Court erred in refusing to rule that upon all the evidence the defendant International Trust

Company is an indispensable party to this suit, and that, inasmuch as it is a resident and citizen of Massachusetts, the District Court acquired no jurisdiction of this cause.

7. That the Court erred in refusing to remand said cause to the State Court (Record, pp. 22, 23).

QUESTIONS

I. Was the proceeding erroneously removed from the Massachusetts Court to the United States Court?

II. Which assignee has the prior claim to the proceeds of the assigned accounts?

SUMMARY OF ARGUMENT.

The Appellant contends:—

I. That the case was erroneously removed:—

(*a*) because the International Trust Company was an indispensable party;

(*b*) because the Appellee, the Manufacturers' Finance Company, had by agreement precluded itself from asking to have it removed.

II. That the Appellant, being the prior assignee, has the prior claim to the proceeds of the assigned accounts:—

(*a*) because the first assignee should have priority unless for some reason it is estopped, and in this case there is no estoppel;

(*b*) because the claim of the later assignee is based not on estoppel but on mere priority of notice, and should not prevail;

(*c*) because there are no precedents binding on this Court in favor of the second assignee, and the Federal decisions relied on by the majority of the Circuit Court of Appeals do not justify this Court in deciding in favor of the second assignee;

(*d*) because the Massachusetts State law is in favor of the first assignee, and in this case local law should be followed by the Federal Court.

ARGUMENT

I

WAS THE PROCEEDING ERRONEOUSLY REMOVED FROM THE MASSACHUSETTS COURT TO THE UNITED STATES COURT?

The Appellant contends it *was* erroneously removed:—

(*a*) because the International Trust Company was an indispensable party;

(*b*) because the Appellee, the Manufacturers' Finance Company, had by agreement, precluded itself from asking to have it removed.

(*a*) The Appellant in its sixth Assignment of Errors states in substance that the Court erred in refusing to rule that the International Trust Company, Appellee, was an indispensable party. A reference to the agreement dated October 6, 1919, between the Manufacturers' Finance Company, Appellee, and the Appellant (Record, pp. 18 and 19) discloses the fact that by Article 1 it was provided that all proceeds of assigned accounts collected by the Finance Company should be deposited "in the International Trust Company of Boston, in a special account in the name of the first party as Trustee, there to remain subject to the terms hereof and for the purposes hereof." The trust *res*, therefore, is the debt the Trust Company owes to the Finance Company as Trustee under this agreement, and in any proceeding to collect this debt the Trust Company (a citizen of Massachusetts) would be an indispensable party. At present the Trust Company cannot honor any check drawn upon it, because, having full knowledge of the facts, it knows the claim against it is held by the Finance

Company as Trustee under the terms of said agreement and for the purposes thereof, and that the money can be withdrawn only upon agreement of both parties to that agreement or upon final decree of some Court of competent jurisdiction. The present suit was brought by the Appellant in a court of competent jurisdiction not only to determine its rights, but to collect the debt. See the Bill of Complaint (Record, pp. 2 4), and particularly the first Prayer of the Bill, which reads "1. That its right to said fund may be established and that the defendants may be ordered to deliver and pay the same to the plaintiff."

The Trust Company was therefore made a party for the purpose of collection and for that purpose must be an indispensable party. If a final decree were to be rendered in favor of the Appellant, it should therefore not only order the Finance Company to draw a check on the deposit in favor of the Appellant, but also should order the Trust Company to honor the check.

(*b*) The Appellant's seventh Assignment of Errors reads as follows: "That the Court erred in refusing to remand said cause to the State Court."

A reference to Article 6 of the agreement dated October 6, 1919, between the Finance Company and the Appellant (Record, p. 19) shows that it was provided that after the Finance Company had collected the assigned accounts and had deposited the proceeds in the International Trust Company of Boston, in a special account in its name as Trustee in accordance with Article 1 of that agreement, the question of the ownership of the proceeds, if the two parties should be unable to agree on the same, should be determined "by a proper proceeding or proceedings in some Court of competent jurisdiction, which proceeding or proceedings may be brought by either party hereto at any time."

Does this not amount to an agreement on the part of

the Finance Company that the Appellant might bring a proceeding in *any* Court of competent jurisdiction?

There is no question that the Superior Court for the County of Suffolk and Commonwealth of Massachusetts was a Court of competent jurisdiction because the Record discloses and the Finance Company itself admits in the agreement, that while it was a Delaware corporation, it had an office in Boston (Record, p. 18).

While the Appellant is aware that this Court has held that an agreement not to remove a case to the Federal Courts is void, and a Statute requiring such an agreement is unconstitutional, yet it seems to the Appellant that it does not necessarily follow that an agreement that a party may bring and prosecute an action in a State Court is not valid and enforceable where based on adequate consideration. The particular agreement made between the Appellant and the Finance Company (Record, pp. 18 and 19) shows that the parties reached an agreement for what seemed to them a practical method for completing the work which should make the assigned accounts payable, for having these accounts collected by having them all assigned to the Finance Company as Trustee for whichever might be entitled to the net proceeds, for having the net proceeds deposited in such a way that the parties might reach a fair decision as to which was entitled to them, or, in case of failure to agree, of having the proceeds safely held until a Court had established the respective rights of the parties.

The Appellant contends that the Finance Company having agreed that a suit might be brought by the Appellant in the State Court ought not now to be allowed to violate its agreement by seeking a removal simply because, as is apparent, its attorneys have advised it that it stands a better chance to get the funds in the Federal Court than in the State Court.

II

WHICH ASSIGNEE HAS THE PRIOR CLAIM TO THE PROCEEDS OF THE ASSIGNED ACCOUNTS?

The Appellant lent its money and received its assignment on May 16, 1919. The Finance Company lent its money and received its assignments on July 15, 1919 and September 20, 1919, respectively. All parties involved in the first assignment, namely, the assignor, the assignee and the debtor, were citizens of Massachusetts. In the subsequent assignments the Finance Company alone was not a citizen of Massachusetts. In the case of each assignment the debt was payable in Massachusetts under a contract made in Massachusetts (Record, p. 16).

Neither the Appellant nor the Finance Company gave any notice to the debtor (the Murray & Tregurtha Corporation) until after the loans had been made and the assignments given, and neither party made any inquiry of the debtor prior to making its loan (Record, p. 16). It is not disputed that the Finance Company gave the first notice of an assignment to the debtor, but not until after it had made its loans and in the case of its principal loan, more than two months after (Record, p. 16).

(*a*) The first assignee should have priority unless for some reason it is estopped.

The assignment of a chose in action is valid and complete, and title to it passes, before any notice is given to the obligor.

Greey v. *Dockendorff*, 231 U. S. 513.
Putnam v. *Story*, 132 Mass. 205.

Thayer v. *Daniels*, 113 Mass. 129, at 131.
Fortunato v. *Patten*, 147 N. Y. 277.
In re Hawley Furnace Co. (C. C. A. 3d Circ.), 238 Fed. 122, at 125.
Petition of National Discount Company (C. C. A. 6th Circ.), 272 Fed. 570 (and cases cited).

Brown, J., in his dissenting opinion in this case (see Record, p. 29) points out that by a Statute in Massachusetts "the assignee of a legal chose in action assigned in writing has a legal right of action in his own name." This Statute at the time of the assignments in question was Revised Laws, C. 173, Sec. 4; now, since the recent codification of the Statutes in Massachusetts, General Laws, C. 231, Sec. 5. There has been no change in the wording of the section. In both Revised Laws and the General Laws it reads as follows:—

> "The assignee of a non-negotiable legal chose in action which has been assigned in writing may maintain an action thereon in his own name, but subject to all defences and rights of counterclaim, recoupment or set-off, to which the defendant would have been entitled had the action been brought in the name of the assignor."

It seems to the Appellant unnecessary to discuss the question on which the authorities seem in some conflict,—whether in view of a Statute of this sort, a legal as distinguished from an equitable title, to a chose in action passes by an assignment in writing. Some title passes;—about that there is no question, and the title is complete so far as the assignor has power to give title. It is, however, unquestionably true, as will be seen by the authorities in all jurisdictions including those in Massachusetts, that the title which an assignee gets may be ousted by estoppel.

Brown, J., says (Record, p. 31), "It is a general principle in courts of equity that, where both parties claim by equi-

table titles, the one who is prior in point of time is deemed the better in right." The same principle must be applied in a case of legal titles.

The Appellant believes this principle cannot be controverted, and if this is true it must determine this case, whether the Court holds the assignment carried a legal or an equitable title, unless on some doctrine of equitable estoppel the rights of the first assignee must be subordinated to those of the second. Any such estoppel, however, to be equitable, must necessarily involve some negligence, laches or other action or inaction on the part of the first assignee which resulted in the second assignee's doing something which it would not otherwise have done.

In this case there is no such equitable estoppel. It is true the Appellant gave no notice to the debtor of its assignment, but this lack of notice in no way affected the conduct of the second assignee. Even if the first assignee *had* notified the debtor, the second assignee would not have discovered it because it made no inquiry of the debtor before taking *its* assignments. As Brown, J., points out (Record, p. 32), there is nothing to show "that the failure of the first assignee to give notice influenced its [the Finance Company's] conduct or that of the debtor."

Upon what, then, does the Finance Company base its claim to the fund in controversy? It is clear from the Record, including both majority and dissenting opinions, that its claim rests solely upon the fact that it first gave notice to the debtor. As stated by Brown, J. (see Record, p. 31), "We are asked to accept and apply the following rule: 'Between two successive bona fide assignees of the same chose in action, the second will prevail if he was the first to give notice to the debtor.' "

(*b*) The claim of the later assignee is based not on estoppel, but on mere priority of notice and should not prevail.

A study of the Record and particularly of the memorandum of decision of Anderson, J., in the District Court (Record, pp. 21 and 22) and of the majority opinion of the Circuit Court of Appeals (Record, pp. 26–28) and the Appellant predicts, of the Finance Company's brief, when presented, will disclose the fact that Brown, J., has accurately and comprehensively stated the entire contention of the Finance Company. In other words, the District Court and the Circuit Court of Appeals for the First Circuit have ruled as a matter of law that mere priority of notice, stripped of all equitable considerations, and standing stark naked, is sufficient to conclude the question. The Finance Company asks this Court to adopt the same rule.

It is necessary to review the authorities which have led the two Courts passing upon this case to such an astounding result.

It is evident from a perusal of the memorandum of decision of Anderson, J., and of the majority opinion of the Circuit Court of Appeals, that the result in each case was reached by a blind following of what the Court considered binding precedent. Anderson, J., is almost apologetic in his memorandum, and, while Bingham, J., in his opinion conceals his emotion, it is evident that he rests the decision solely on what he calls "the well-established rule in the Federal Courts."

Neither of these learned Judges gives any reason defending the rule or supposed rule of law which is followed, and it is submitted by the Appellant that in the few other cases where this rule of law, stripped, as stated above, of all equitable considerations, has been laid down, no defence of it as a matter of principle, will be found. This will be shown later in a detailed discussion of the authorities.

Anderson, J., and Brown, J., in his dissenting opinion,

both state that the rule on this question in the Commonwealth of Massachusetts is contrary to what the District and the majority of the Circuit Court of Appeals have held to be the Federal rule.

Anderson, J., states (Record, p. 21), "The Massachusetts rule is in favor of the prior assignee."

Brown, J., states (Record, p. 28), "It is conceded that under the law of Massachusetts the fund belongs to the Salem Trust Company, the first assignee."

Bingham, J. (Record, p. 28), makes the following admission: "The law of Massachusetts relating to the assignment of choses in action is the same as that of New York. . . ."

That the Massachusetts rule *is* in favor of the first assignee cannot be questioned. In that State it is clearly established that in the absence of estoppel the claim of the first assignee of a chose in action will prevail against that of a subsequent assignee regardless of notice to the obligor.

> *Thayer* v. *Daniels*, 113 Mass. 129, at 131.
> *Putnam* v. *Story*, 132 Mass. 205.
> *Herman* v. *Conn. Mut. Life Ins. Co.*, 218 Mass. 181, at 186.
> *Rabinowitz* v. *People's Nat'l Bank*, 235 Mass. 102, at 104.

At the outset, therefore, it is clear that in the mind of the Court there were two rules of law,—the so-called Federal rule and the so-called Massachusetts rule. A study of the case makes it appear obvious that the Finance Company thought that the law governing successive assignments of choses in action differed in the Federal and Massachusetts Courts, and that was the reason for its petition for removal of the case to the Federal Court.

An analysis of this idea existing in the minds of the Circuit Court of Appeals and of the Finance Company seems appropriate and involves three questions: First: What territory is the jurisdictional unit whose law applies?

Second: What Court is to be followed in the determination of that law? Third: What is the rule laid down by such Court?

Since the contracts of assignment were both made in Massachusetts, and to be performed there, and since all the parties involved, with the exception of the Finance Company, were Massachusetts corporations, and since the forum was a Massachusetts forum, it is evident that the territorial law of Massachusetts must govern all the questions involved, unless the fact that the Finance Company was a Delaware corporation gives it the right to demand the application of the law of some other geographical unit.

Brown, J., in his dissenting opinion (Record, p. 30) shows clearly that a foreign corporation admitted by a State to do business therein, is not, on account of the fact that it is a citizen of another State, entitled to preferential treatment over citizens of the State in which it is doing business, but, on the contrary, is held to accept the laws of that State, and cites *Horn Silver Mining Company* v. *New York*, 143 U. S. 305, at 315; *Shaffer* v. *Carter*, 252 U. S. 37, at 53.

But, though the territorial law of Massachusetts applies, there still remain the questions as to what is the territorial law of Massachusetts, and what ought properly to influence the Federal Courts in their declaration of such law. This is well stated by Professor Beale of the Harvard Law School, in the Summary to the 1902 Edition of Beale's Cases on Conflicts of Laws, as follows:—

> SEC. 13. "When two courts of equal authority, and without a common superior, have the duty of declaring the same law, there is no possibility of compelling them to adopt the same view of the law. If they differ, this cannot mean that there are two laws, but merely that one court or both, is mistaken in its statement of the law.
>
> "An example of such co-ordinate courts, without a common superior is the State and Federal Courts, in

> all cases where Federal jurisdiction depends upon diverse citizenship. In such cases the Federal Court is declaring the law of the State, but declines to accept as binding, a prior declaration of the law by the State Court."

The majority opinion in the Circuit Court of Appeals held that the relative merits of the equities of successive assignees of the same chose in action was a question of general jurisprudence, and that, consequently, the Federal Courts were not bound by decisions of the State Court in determining the territorial law of Massachusetts.

Much space could be occupied in reviewing the authorities and discussing the point raised by the statement in the majority opinion of the Circuit Court of Appeals that the question "is one of general jurisprudence as to which the decisions of the highest courts of a State are not controlling. . . ." But after all, whether or not the phrase "general jurisprudence" is rightly used, the idea in the mind of the Court really amounts to nothing more than that the question is one which the Federal Courts have a right to decide as they think best, without more regard than mere respect to the decisions of the highest Court of the State in which the question arises. If this is true, it goes without saying that the question should be decided rightly and not wrongly, unless an incorrect rule has been established by precedents of such a character that it would upset the business of the community to have a change made. In this case, as will be shown later, there were no precedents laid down by the Supreme Court of the United States, establishing or approving the naked rule of law contended for by the Finance Company, nor were there any such precedents binding upon the Circuit Court of Appeals for the First Circuit, as that Court was not bound by the decisions of the Circuit Court of Appeals for the Second Circuit, unless those had been approved by the Supreme Court of the United States.

Unquestionably the following may be stated as a general rule:—

> "Rules of property established by the judicial decisions of the highest court of a state, and also general rules and principles of jurisprudence locally developed and peculiar to the given state, whether statutory or growing out of common law, when similarly established, will be accepted and followed by the United States courts without inquiry into their legal correctness, no federal question being involved."
>
> Black's Law of Judicial Precedents, Sec. 149.

There are, however, certain exceptions which the Supreme Court of the United States has itself recognized, such as questions arising out of the law merchant or general commercial law and questions described, whether rightly or wrongly, as of general jurisprudence.

On the other hand, the Supreme Court of the United States has stated in a number of cases that on many questions the local law of a State should be followed by the Federal Court, particularly in cases where no Federal question is involved and the jurisdiction of the Federal Court depends solely on diversity of citizenship. These cases will be dealt with later.

As the Appellant has intimated, it may be unnecessary for this Court to enter into a detailed consideration of the principles suggested by the preceding paragraphs, because it is clear that whether or not the Federal Court is bound, on this particular question, to follow the decisions of the State Court, it certainly is true that the decision of the Federal Court ought to be right and not wrong, and the rule contended for by the Finance Company appears to the Appellant so clearly wrong that it does not believe this Court will uphold it.

At any rate, the law involved is the body of law governing the physical territory of the Commonwealth of Massachusetts. There can be only one true body of law govern-

ing any geographical unit. The Massachusetts Courts have an established rule on the precise question here involved. If the rule thus established is not the law of Massachusetts, it must be because of the existence of another rule of law applicable to Massachusetts, which the Federal Courts sitting in Massachusetts are bound by precedent or are at liberty to follow. If the Federal Courts declare a rule of law without the restrictions of a binding precedent, then such rule must be in accordance with reason and the true principles of law and equity pertaining to the question involved. If they are bound by precedent, it must be precedent applicable within the territorial limits of their jurisdiction, as established either by the State Courts, by the District or Circuit Court for Massachusetts, or by the Supreme Court of the United States, either for Massachusetts, or for the United States as a whole. The decisions of the Circuit Court of Appeals for the other Circuits are not binding upon the Circuit Court of Appeals for the First Circuit; although conflicting decisions in different Circuits where not justified by a similar conflict between the rules of the State Courts in their respective territories, may indicate that one or the other is in error, and thus justify the granting of a writ of certiorari.

The Appellant contends that the true rule applicable to this case is the rule that notice to the debtor is not necessary to protect a prior assignee of a chose in action against a subsequent assignee who, having made no inquiry of the debtor, was not deceived by want of such notice, and who has not acquired a legal title.

If this rule is established, a person contemplating lending money on an assignment of a chose in action, will know that to surely protect himself he ought first to inquire of the debtor whether he knows of any prior assignment, and after taking the assignment he should promptly notify the debtor, so that on a subsequent inquiry the debtor may disclose the fact of the assignment. The inquiry of the debtor, however,

by one contemplating taking an assignment is an essential element. Mere notice to the debtor accomplishes nothing and both inquiry and notice on the part of a subsequent assignee should be held by the courts necessary to oust a prior assignment.

(c) The Federal decisions relied on by the majority of the Circuit Court of Appeals for the First Circuit and by the Finance Company do not justify this Court in approving the rule laid down and contended for.

An excellent, thorough and logical discussion of the authorities and law on this point will be found in the dissenting opinion of Brown, J. (Record, pp. 31-38).

It would seem unnecessary to add to what the learned Judge has said in this part of his opinion. The question, however, is one of importance, and to the Appellant of particular importance, and in order that nothing may be left unsaid which has occurred to its counsel, the Appellant feels obliged to ask the Court to indulgently consider the matter further.

To start with the cases which to date have been relied upon either by the majority of the Circuit Court of Appeals or by the Finance Company, there are only two (aside from State Court cases, where the rule varies so widely in different States that the Appellant hesitates to burden the Court with a discussion of the variations) which support the naked rule laid down by the majority of the Circuit Court of Appeals and asked for by the Finance Company. Those two were both decided by the Circuit Court of Appeals for the Second Circuit, namely, *Methven* v. *Staten Island Light, Heat & Power Co.* and *In re Leterman Becher & Co. Inc., supra.* The latter is based squarely on the former, and the former is based on the Court's understanding of two cases decided by the Supreme Court of

the United States, namely, *Judson* v. *Corcoran*, 17 How. 612, and *Spain* v. *Hamilton's Administrator*, 1 Wall. 604.

The Circuit Court of Appeals for the Second Circuit, therefore, thought it was applying a rule which had been laid down by the Supreme Court of the United States, and, therefore, it becomes necessary to study *Judson* v. *Corcoran* and *Spain* v. *Hamilton's Administrator*.

In the former, a part owner of a suspended claim against Mexico for unlawful seizure of a cargo assigned to Judson an interest therein, subsequently assigning the entire claim to others. To the latter assignments Corcoran eventually succeeded, and prosecuted the claim to a final award by the Board of Commissioners. Judson gave no notice of his claim until the final award. It was held (p. 614):—

> "Here Corcoran has drawn to his equity a legal title to the fund [the award of the Commissioners], which legal title Judson seeks to set aside, and asks an affirmative decree in his favor to that effect."
>
> "Now nothing is better settled than that this cannot be done. The equities being equal, the law must prevail."

The dictum relied upon to establish the so-called "Federal Rule" is as follows:—

> "There may be cases in which the purchaser, by sustaining the character of a bona fide assignee, will be in a better situation than the person was of whom he bought, as, for instance, where the purchaser who alone has made inquiry and given notice to the debtor . . . would be preferred over the prior purchaser, who neglected to give notice of his assignment, and warn others not to buy."

Neither the decision nor the dictum establishes the naked rule that mere priority of notice is sufficient to entitle a subsequent assignee to the fund. On the contrary, the dictum, instead of being an authority in support of this

rule, seems to support the rule contended for by the Appellant, namely, that *both* inquiry and notice are necessary.

In *Spain* v. *Hamilton's Administrator*, Hamilton assigned to Spain generally all claims which he had or might later have against any person or body corporate for commissions for personal services. Later, Hamilton assigned a specific claim for commission to other assignees for value. The person from whom the commission was payable "accepted" the later assignments upon notice thereof. Spain gave no notice until after such "acceptance," six years after the assignment to him. Your Honorable Court found for the later assignees. That they had made inquiry and that your Honorable Court considered this important, is seen on page 623, where it is said:—

> "On the contrary Wetmore and Corcoran and Riggs used every precaution to protect themselves before the latter lent to Hamilton $25,000."

Another case decided by the Supreme Court of the United States, namely, *Laclede Bank* v. *Schuler*, 120 U. S. 511, was relied upon by the Finance Company before the Circuit Court of Appeals. That case was not one of successive assignments, but one where a debtor gave a check on his bank account and later, before the check had been presented to the bank, made an assignment for the benefit of creditors. This Court said the check was only an acknowledgment of debt and did not become effective until presented for payment, and meantime, the assignment for creditors had been made, and the bank notified of it before presentation of the check. It is obvious there is a clear distinction between that case and one of successive assignments. If, as seems clear, the two cases decided by the Circuit Court of Appeals for the Second Circuit are based on a misapprehension of what the Supreme Court of the United States *has* decided, it follows that they are not entitled to consideration, because they do

not purport to establish any rule of their own or to defend the rule they declare, but simply rest on what they believe to have been the decisions of this Court.

Again ignoring, for the sake of brevity, the various decisions in various States, so far as the *Federal* cases go, they all relate back to the English case of *Dearle* v. *Hall*, 3 Russ. 1. That case is exhaustively considered by Brown, J., in his dissenting opinion. It is only necessary to again suggest that that case, supposed by such of our Federal Courts as have adopted the naked rule of mere priority of notice to be the parent of that rule, does not lay down that rule. There the subsequent assignee which was given preference not only had given the first notice, but had made *inquiry*.

See *Dearle* v. *Hall*, 3 Russ. 1, at page 18:—

> "It was said that Hall [the successful assignee] had not exercised due diligence; for that the question, whether there was any prior encumbrance on the fund was not put directly either to Brown [the assignor] or to the executor, and it is true that the question was not put in expressed words; but was it not put in substance? The inquiries were such as drew from Unthank [the trustee] what is tantamount to an assurance that there was an absolute title in Brown."

This was a material circumstance, the Court treated it as such, and, in the opinion of the Appellant, it was the basis of the Court's opinion.

As Brown, J., points out, some of the later English cases have criticised most emphatically *Dearle* v. *Hall*, and its companion case, *Foster* v. *Cockerell*, 3 Cl. & F. 456.

There are several other Federal cases which the Finance Company relied on before the Circuit Court of Appeals, namely:—

Farmers and Merchants Bank v. *Farwell*, 58 Fed. 633 (C. C. A. 8th Circ.).

The Elmbank, 72 Fed. 610 (D. C. Cal.).

Third National Bank v. *Atlantic City*, 126 Fed. 413 (C. C. N. J.).
In re Hawley Down-Draft Furnace Co., 233 Fed. 451 (D. C. Penn.).

In the first of these, it is a dictum only that is relied on by the Finance Company, but the part of the opinion in which this dictum is contained clearly shows it is no authority for the naked rule of priority of notice (see pp. 637–638):—

> "If, while he held possession of the policies and was prosecuting the actions upon them in his own name Frishman had assigned his claim against the companies to the bank or to a third person for value, and without notice of the prior assignment, and the subsequent assignee had first given notice to the Insurance Companies of his assignment, Farwell & Co. would have been estopped to claim the proceeds of the policies as against such an assignee. To this effect are *Dearle* v. *Hall*, *Spain* v. *Hamilton's Administrator* and *Judson* v. *Corcoran*. And they rest upon the rule that where one of two innocent parties, holding title of equal apparent validity must suffer through the fault of a third that one must bear the loss who has put it in the power of the third to commit the fraud."

This is far from saying that a first assignee will lose, even though a second assignee having made no inquiry, and not being deceived by any want of notice, himself gave notice long after giving value for his assignment.

No great reliance can be placed on the dictum in *The Elmbank*, *supra*.

The case of the *Third National Bank* v. *Atlantic City*, *supra*, taken in connection with the opinion of the Circuit Court of Appeals in that case reversing the lower Court (130 Fed. 751), is fully as much an authority for the Appellant as it is for the Finance Company.

In that case a man having a contract with a City pre-

sented an order to the City requesting the issue of a warrant to a bank (with which the contractor was doing business), for some of the money due. The City accepted the order, which the contractor then delivered to the bank, which gave no further notice to the City until after the contractor had made assignments to other persons of the same sums, some of which persons gave notice to the City prior to that given by the bank.

The Circuit Court of Appeals stated in substance (p. 753) that the Circuit Court had ruled that where there were two assignments of the same chose in action, the assignee first giving notice to the debtor had the prior right. It proceeds "But even upon that principle, the conclusion of the court we think was wrong"; and then decides the case for the bank on the ground that the acceptance by the City of the order requesting the issue of a warrant to the bank completed a title in the bank.

The case of *In re Hawley Down-Draft Furnace Co., supra*, relied on by the Finance Company, was reversed by the Circuit Court of Appeals for the Third Circuit (see 238 Fed. 122).

At any rate it should be observed that the District Court of Pennsylvania in *In re Hawley Down-Draft Furnace Co.* applied the local law of Pennsylvania, which is to the effect that the assignee who first gives notice to the debtor obtains the priority.

The Federal cases which have adopted or followed the naked rule of priority of notice all seem to relate back to the English case of *Dearle* v. *Hall, ubi supra*. In that case, as has been shown, there was another element—namely, inquiry—in addition to priority of notice. In the case of *Loveridge* v. *Cooper*, 3 Russ. 30, decided by the same Court and at the same time as *Dearle* v. *Hall*, there was also the element of inquiry. Certain of the later English cases, of which perhaps the most notable example is *Foster* v. *Cockerell*, 3 Cl. & F. 456, which purports to rest on *Dearle* v. *Hall*

and *Loveridge* v. *Cooper*, seem, however, to have adopted the naked rule of mere priority of notice.

As Brown, J., points out in his dissenting opinion (Record, p. 31), *Dearle* v. *Hall* and *Foster* v. *Cockerell* were roughly handled by Lord Macnaghten in *Ward* v. *Duncombe*, 1893 A. C. 369, 390, who stated that the rule adopted "gives the go-by to all considerations founded upon the conduct of the parties" and "has gone perilously near legislating."

If *Dearle* v. *Hall* is to be stripped of the element of inquiry and taken as authority for the naked rule of mere priority of notice, then the Appellant is ready to go even further than Lord Macnaghten and to say that the Courts in *Dearle* v. *Hall* and *Foster* v. *Cockerell* actually did usurp the functions of legislative bodies.

In cases of successive assignments of choses in action it is fair for one and fair for all to have well-established rules of equitable estoppel applied, which rules must depend, in large measure, on the conduct of the parties. To arbitrarily establish, however, as the *sole* element a mere giving of notice to the debtor, often long after the subsequent assignee has taken his risk and lent his money without preliminary precautions, and where the lack of notice by a prior assignee has in no way deceived him, is nothing short of legislation, and should depend on statute and not on judicial determination.

If it has not become sufficiently clear that the naked rule of priority of notice is not based on any sound or sensible principle of equity and is not a practical means of accomplishing the result which all Courts desire, the Appellant believes a perusal of the case of *Foster* v. *Cockerell*, *ubi supra*, including the arguments of counsel for the prior assignee, will carry conviction. Not a single argument defending the rule is made by the Court, while many arguments are given against it by counsel for the prior assignee.

So much for the authorities relied upon as upholding the naked rule of mere priority of notice.

The Appellant respectfully submits that not only the weight of authority of the decisions in the various State Courts, but also the weight of Federal decisions are against this rule and in favor of a rule based on equitable estoppel.

For the convenience of the Court, the Appellant, further on, will give a reference to some of the cases establishing one rule or another in some of the States. For the moment, however, it seems more important to speak of Federal decisions.

In the case of *Grecy* v. *Dockendorff*, 231 U. S. 513, no question was raised between successive assignees, and therefore it was not necessary for the Court to deal with that question. The Court did, however, make some important rulings, and the trend of the reasoning is such as would seem to justify the Appellant in believing this Court will not approve the naked rule of mere priority of notice.

One Dockendorff lent money to a company (later adjudicated bankrupt) under an agreement whereby the company was to assign to Dockendorff accounts receivable within seven days of shipment of goods. Were such assignments good as against general creditors of the bankrupt? The Court held that they were, and said at page 516 (Mr. Justice Holmes):—

> "The advances were the liens by which the bankrupt got the ownership of the goods. The contract of itself would operate as a conveyance as soon as the rights to which it applied were acquired. *Field* v. *New York*, 6 N. Y. 179. . . . It is objected that this lien was secret. But notice to the debtors was not necessary to the validity of the assignment as against creditors. *Williams* v. *Ingersoll*, 89 N. Y. 508, 522, and merely keeping silence to the latter whether known or unknown created no estoppel.
>
> *Wiser* v. *Lawler*, 189 U. S. 260, at 270.
> *Ackerman* v. *True*, 175 N. Y. 353, 363.

There was no active concealment and no attempt to mislead any one interested to know the truth."

Incidentally it would seem as if this Court, in considering the question of the validity of an assignment, had applied the local law as laid down by the Courts of New York State.

The case of Petition of the National Discount Company, 272 Fed. 570 (C. C. A. 6th Circ.), is helpful as showing not only that "the Tennessee rule of necessity of notice to the debtor is opposed to the great weight of authority" (see p. 576), but also that the Court thought this question of notice as affecting the validity of an assignment involved "a rule of property having a situs within the state" and because the Court considered that the situs of the property was Ohio and not Tennessee, it followed Ohio and not Tennessee state law (see pp. 575–576).

On page 574 the Court says:—

> "Under the generally accepted rule of law, and where, as here, the rights of the debtors owing the accounts are not involved, the assignments in question, made, as they were, in good faith, were valid as against both the bankrupt and its creditors, notwithstanding no notice was given the latter, and in spite of the fact that the assigned claims remained in the bankrupt's possession, and that those liable to pay the claims were not notified of the assignment.
>
> "*Greey* v. *Dockendorff*, 231 U. S. 513–516; *In re Cincinnati Iron Store* (C. C. A. 6, 167 Fed. 486–490); *Union Trust Co.* v. *Bulkley* (C. C. A. 6, 150 Fed. 510–516–517); *In re Hawley Furnace Co.* (C. C. A. 3, 238 Fed. 122–125); *Williams* v. *Ingersoll*, 89 New York 508, 522; *Thayer* v. *Daniels*, 113 Mass. 129; *Copeland* v. *Manton*, 22 Ohio State 44; *Preston National Bank* v. *Purifier Co.*, 84 Michigan 364–387."

As a summary of what has been said under this subdivision (*c*) of II, the Appellant quotes the following from the dissenting opinion of Brown, J. (Record, pp. 37–38):—

"Taking the decision in *Dearle* v. *Hall* as a whole, coupling together inquiry, reliance and notice, we have the rule as stated in *Somerset* v. *Cox*, 33 Beav. 634, 639: 'By means of it money may safely be lent on security of trust funds on ascertaining that the trustee has no notice of any prior incumbrance.'

"As an exception to the general rule that he who is prior in time is prior in right this seems to be a reasonable rule that can be administered without contradiction of the established principles of estoppel and laches. We are not required by the decisions of the Supreme Court to go further.

"The further exception from that general rule of cases where the second assignee is prior merely in giving notice *ex post facto* is not supported by substantial reasons."

The Appellant will not quote, but will respectfully refer the Court to the rest of what is said by the learned Judge on page 38.

So far as a definite position has been taken on the question here involved, by the courts of the several States, the following will show what the rule is in the States named. In the other twenty-one States apparently no definite rule has yet been established.

In the following States the rule of equitable estoppel applies between successive assignees: Alabama, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Minnesota, New Hampshire, New York, Ohio, Oregon, South Carolina, Texas, Washington, West Virginia.

In the following States the naked rule of mere priority of notice seems to have been applied: California, Connecticut, Iowa, Maryland, Mississippi, Missouri, New Jersey, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia. Also District of Columbia.

(*d*) In this case, where no Federal question is involved and where the jurisdiction of the Federal Court depends solely on diversity of citizenship, the local law of Massachusetts *should* be followed.

The Appellant recognizes, as stated above, that this Court has established certain exceptions to the general rule of law that the United States Courts will follow rules of property and general rules and principles of jurisprudence established by State Courts. In each case it must be determined whether the particular rule in question falls within one of these exceptions.

The Appellant respectfully believes that, whether or not this Court decides the local law of Massachusetts *must* be followed in this case, the case will be decided in favor of the rule which the Appellant contends for, not because it is the Massachusetts rule, but because this Court is bound by no adverse precedent and will conclude that the rule is right in principle and affords sufficient protection to a subsequent assignee.

As, however, the majority of the Circuit Court of Appeals for the First Circuit, and the Circuit Court of Appeals for the Second Circuit in the cases of *Methven* v. *Staten Island Light, Heat & Power Co.*, 66 Fed. 113, and *In re Leterman, Becher & Co. Inc.*, 260 Fed. 543, have stressed the point that the question was one "of general jurisprudence" and therefore could be decided without reference to local law, the Appellant sets forth a number of cases which seem to it so analogous as to admit of no distinction, where this Court or some other Federal Court has held that local law should be applied.

1. State Court decisions control Federal Courts as to assignments and pledges of choses in action and as to chattel mortgages, conditional sales and liens:—

Bailey v. *Baker Ice Machine Co.*, 239 U. S. 268.
Dale v. *Pattison*, 234 U. S. 399.
Taney v. *Penn Bank*, 232 U. S. 174.
Barnes v. *Alexander*, 232 U. S. 117.
Sexton v. *Kessler*, 225 U. S. 90.
Brant v. *Swofford Bros.*, 214 U. S. 279.
Hiscock v. *Varick Bank of New York*, 206 U. S. 28.
Humphrey v. *Tatman*, 198 U. S. 91.
Thompson v. *Fairbanks*, 196 U. S. 516.
Dooley v. *Pease*, 180 U. S. 126.
Knapp, Stout & Co. v. *McCaffrey*, 177 U. S. 638.
Etheridge v. *Sperry*, 139 U. S. 266.
Randolph v. *Quidnick Co.*, 135 U. S. 457.
Berlet v. *Lehigh Valley Silk Mills*, 287 Fed. 769 (C. C. A. 3d Circ.).
In re Hub Carpet Co., 282 Fed. 12 (C. C. A. 2d Circ.).
Atherton v. *Beaman*, 264 Fed. 878 (C. C. A. 1st Circ.).
First National Bank of Evanston v. *Bank of Waynesboro*, 262 Fed. 754 (C. C. A. 8th Circ.).
In re Hawley Down-Draft Furnace Co., 238 Fed. 122 (C. C. A. 3d Circ.).
Klinger v. *Hyman*, 223 Fed. 257 (C. C. A. 2d Circ.).
Triumph Electric Co. v. *Patterson*, 211 Fed. 244 (C. C. A. 8th Circ.).
Joseph Dixon Crucible Co. v. *Paul*, 167 Fed. 784 (C. C. A. 6th Circ.).
Union Trust Co. v. *Bulkley*, 150 Fed. 510 (C. C. A. 6th Circ.).
Brown v. *Grand Rapids Parlor Furniture Co.*, 58 Fed. 286 (C. C. A. 6th Circ.).
In re Ames, 283 Fed. 465.

In re Ballard, 279 Fed. 574.
In re Nader, 276 Fed. 123.
In re American Steel Supply Syndicate, 256 Fed. 876.
Commonwealth S.S. Co. v. *American Shipbuilding Co.*, 197 Fed. 780.
Hamilton v. *David C. Beggs Co.*, 179 Fed. 949.
Davis v. *Mills*, 99 Fed. 39.
J. M. Atherton Co. v. *Ives*, 20 Fed. 894.

2. As to real estate, wills, descent and distribution:—

Kuhn v. *Fairmount Coal Co.*, 215 U. S. 349.
East Central Eureka Mining Co. v. *Central Eureka*, 204 U. S. 266.
Whitaker v. *McBride*, 197 U. S. 510.
Clarke v. *Clarke*, 178 U. S. 186.
DeVaughn v. *Hutchinson*, 165 U. S. 566.
Schreyer v. *Scott*, 134 U. S. 405.
Lloyd v. *Fulton*, 91 U. S. 479.
Anderson v. *Gray*, 284 Fed. 770 (C. C. A. 5th Circ.).
Pickens v. *Merriam*, 274 Fed. 1 (C. C. A. 9th Circ.).
Midway Irrigation Co. v. *Snake Creek*, 271 Fed. 157 (C. C. A. 8th Circ.).
Wells v. *Brown*, 255 Fed. 852 (C. C. A. 8th Circ.).
Highland Park Mfg. Co. v. *Steele*, 232 Fed. 10 (C. C. A. 4th Circ.).
Percy Summer Club v. *Astle*, 163 Fed. 1 (C. C. A. 1st Circ.).
Mutual Development Co. v. *Kentucky Coal Lands Co.*, 285 Fed. 761.
McMullen v. *Zabawski*, 283 Fed. 552.
American Brake Shoe & Foundry Co. v. *New York Railways Co.*, 278 Fed. 842.

3. As to construction of state constitutions and statutes:—

Lewis v. *Herrera*, 208 U. S. 309.
York Mfg. Co. v. *Cassell*, 201 U. S. 344.
Theological Seminary v. *Illinois*, 188 U. S. 662.
Warburton v. *White*, 176 U. S. 484.
Missouri, Kansas, etc., Trust Co. v. *Krumseig*, 172 U. S. 351.
Forsyth v. *Hammond*, 166 U. S. 506.
Balkam v. *Woodstock Iron Co.*, 154 U. S. 177.
Miller v. *Ammon*, 145 U. S. 421.
Bacon v. *Northwestern Life Insurance Co.*, 131 U. S. 258.
Railroad Co. v. *Georgia*, 98 U. S. 359.
Townsend v. *Todd*, 91 U. S. 452.
J. T. Fargason v. *Furst*, 287 Fed. 306 (C. C. A. 8th Circ.).
Irwin v. *Maple*, 252 Fed. 10 (C. C. A. 6th Circ.).
In re Jarnol, 283 Fed. 547.
Sanduski Cement Co. v. *A. R. Hamilton & Co.*, 273 Fed. 596.

4. As to liability for personal injury:—

Hartford Fire Insurance Co. v. *Chicago, Milwaukee & St. Paul Ry. Co.*, 175 U. S. 91.
Bucher v. *Cheshire R.R. Co.*, 125 U. S. 555.
Detroit v. *Osborne*, 135 U. S. 492.
Dennick v. *Railroad Co.*, 103 U. S. 11.
Nichols v. *Atchison, Topeka & Sante Fe Ry.*, 286 Fed. 1 (C. C. A. 9th Circ.).
Snare & Triest Co. v. *Friedman*, 169 Fed. 1 (C. C. A. 3d Circ.).
Easton v. *Houston & T. C. Ry. Co.*, 32 Fed. 893.

5. As to miscellaneous contracts:—

Lubriko Co. v. *Wyman*, 290 Fed. 12 (C. C. A. 3d Circ.), personal service contract.

B. F. Sturtevant Co. v. *Fidelity & Deposit Co., of Maryland*, 285 Fed. 367 (C. C. A. 2d Circ.), personal service contract.

American Trading Co. v. *Steele*, 274 Fed. 774 (C. C. A. 9th Circ.), personal service contract.

In re Codman, 284 Fed. 273, relations between broker and customer.

Crampton v. *Lautz Bros. & Co. Inc.*, 274 Fed. 743, priority of claim for wages.

Brown, J., in his dissenting opinion, gives some reasons other than those usually mentioned in such cases as are hereinbefore cited, why Massachusetts law should be followed (Record, pp. 28–30).

He points out first that the contract which created the debt assigned was a Massachusetts contract between two Massachusetts corporations; that the first assignment was made in Massachusetts, to a Massachusetts corporation. He says, "As these transactions were all between citizens of Massachusetts, the state law of that state determined as between them, the obligations and rights of the three parties —the debtor, the assignor and the assignee."

He proceeds, "After the rights of these citizens of Massachusetts had become fixed under the law of that state. . ." the second assignment was made to a Delaware corporation, but one having a usual place of business in Massachusetts. "The different citizenship of the second assignee is not enough to avoid the conclusion that the second assignment, like the first, was a contract made and to be enforced in Massachusetts, and subject to the laws of that state."

Again he says, "The rule that authoritative state decisions rendered by a state court before the rights of the parties accrued and became fixed are presumed to be known to the parties, and form part of the contract, seems as applicable to written assignments of book accounts, or accounts receivable, as to conveyances or written instruments between private parties evidencing a transfer of real property or tangible personal property. . . ."

Again: "It would seem sufficient for the purposes of this case to hold that the state law of Massachusetts forms part of and controls these contracts of assignment. A foreign corporation which is permitted to maintain a usual place of business in the state of Massachusetts for the transaction of local business, certainly has no right to preferential treatment as compared with resident citizens of Massachusetts, or to complain that it is subject to the same law. . . . The different citizenship of the parties does not give to the contract an interstate character or create a right to question the local policy of a state in respect to the transfer of property, tangible or intangible."

(e) The denial of certiorari in *In re Leterman, Becher & Co.*, 260 Fed. 543—see *Coleman & Co.* v. *Tawas & Co.*, 250 U. S. 668—adds nothing to the authority of that case.

The above proposition is laid down by Brown, J., in his dissenting opinion (Record, p. 38), and he cites the case of *Hamilton-Brown Shoe Co.* v. *Wolf Bros.*, 240 U. S. 251, at 257 and 258.

This proposition seems reasonably clear, but Bingham, J., in the majority opinion in the Circuit Court of Appeals (Record, p. 28), lays great stress on this denial of certiorari.

Regardless of how the question may have been presented to this Court in the petition for certiorari in the case of *Coleman & Co.* v. *Tawas & Co.*, there is a clear distinction

between that case and the present case, for the contracts in *In re Leterman, Becher & Co., supra*, were made after the decision in the Second Circuit of *Methven* v. *Staten Island Light, Heat and Power Co., supra;* whereas in this case, when the assignments were made, the established decisional rule of the Massachusetts State Courts was as yet unassailed by any contrary decision of its Federal Courts, and the petition for certiorari in the Leterman case had not been denied.

There is another case in which the Supreme Court of the United States has granted certiorari: see *Wallace Benedict as Receiver, etc.* v. *Aaron Ratner*, 259 U. S. 579.

In that case, a writ of certiorari was granted from the decision of the Circuit Court of Appeals for the Second Circuit in *In re Hub Carpet Company*, 282 Fed. 12.

As nearly as can be ascertained from the briefs, the sole contention of the Appellant in that case is that an assignment of accounts receivable, in case the accounts are left in the possession of the assignor, should be treated under the so-called New York Personal Property Law on the same basis as mortgaged chattels. There is no question in that case between successive assignees of the same accounts, while there is no question in the case at bar between creditors of the assignor and either of the assignees. Therefore, even if this Court should uphold the contention of the Appellant in *Benedict* v. *Ratner*, it cannot be taken as an authority against the Appellant in this case. If an authority at all, it would preclude the Finance Company as effectually as the Appellant.

As, however, it is a logical although minor part of the Appellant's case, to have the rule settled that an assignment of an account receivable carries title as between assignor and assignee without notice to the debtor, and is good also against creditors of the assignor, the Appellant will refer the

Court again to the Case of *Greey* v. *Dockendorff*, 231 U. S. 513, which would seem to be directly contrary to the contention of the Appellant in the *Benedict* v. *Ratner* case.

It is submitted that by the great weight of authority an assignee of a chose in action has priority without notice over attaching or other creditors of the assignor. 5 Corpus Juris, 971–973.

CONCLUSION

If the Court feels the case was erroneously removed from the State Court, there is no need to consider the other branch of the case.

If, on the other hand, the Court feels that this cannot be decided as a matter of law, the question as to the priority of rights of successive assignees is fairly presented, and in that event the Appellant contends:—

1. That the Court should apply the local law of Massachusetts which is in favor of the first assignee.
2. That even if the Court decides it is not obligated to follow the local law, there are no precedents which make it necessary to approve the naked rule of mere priority of notice.
3. That the rule to be applied is that the earlier assignee is the prior in right, unless his claim should be subordinated on account of circumstances which create an equitable estoppel.
4. That mere priority of notice to the debtor by a later assignee who made no inquiry of the debtor before lending his money and taking his assignment, and who was in no way deceived by lack of notice to the debtor on the part of an earlier assignee, is not sufficient to create an equitable estoppel.
5. That the decision of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

ALEXANDER WHITESIDE,
Counsel for the
Salem Trust Company, Appellant.

ARTHUR DRINKWATER,
RAYMOND P. BALDWIN,
Of Counsel.

SALEM TRUST COMPANY *v.* MANUFACTURERS' FINANCE COMPANY ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

No. 74. Argued October 15, 1923.—Decided February 18, 1924.

1. In a suit between citizens of different States to determine which of them is entitled to a fund which by their agreement has been collected by one and deposited to his special account, as trustee, to be paid to himself or the other as the issue between them shall be determined, the depositary is not a necessary party, and its joinder as defendant in the state court will not prevent removal to the federal court. P. 189.
2. In the absence of any local statute or usage, the question whether prior notice to the debtor of the later of two assignments of an account receivable subordinates the rights of the earlier to those of the later assignee, is a question of general law in deciding which the federal court is not bound by the decisions of the highest court of the State. P. 191.
3. While there are contingencies which entitle the second of two successive assignees of the same chose in action to prevail over the first, mere priority of notice to the debtor by a second assignee who lent money to the assignor in consideration of his assignment, without making any inquiry of the debtor, is not sufficient to subordinate the first assignment to the second. Pp. 194, 197.

280 Fed. 803, reversed.

CERTIORARI to a decree of the Circuit Court of Appeals affirming a decree of the District Court which dismissed a suit brought by the above named petitioner against the above named respondent, and its corespondent, International Trust Company, to determine the rights of the first two, as assignees, to a fund deposited with the third.

Mr. Alexander Whiteside, with whom *Mr. Arthur Drinkwater* and *Mr. Raymond P. Baldwin* were on the brief, for petitioner.

The proceeding was erroneously removed.

The trust *res* is the debt the Trust Company owes the Finance Company as trustee under the agreement between petitioner and respondent. This suit was brought by petitioner not only to determine its rights, but to collect the debt. The Trust Company was made a party for the purpose of collection, and for that purpose must be an indispensable party.

The agreement also provided that the question of the ownership of the proceeds of the assigned accounts, if the two parties should be unable to agree on the same, should be determined by a proper proceeding, brought by either party, in a court of competent jurisdiction. This amounts to an agreement on the part of the Finance Company that petitioner might bring a proceeding in *any* court of competent jurisdiction. While an agreement not to remove a case to a federal court is void, it does not follow that an agreement that a party may prosecute an action in a state court is not valid and enforceable where based on adequate consideration.

By the great weight of authority an assignee of a chose in action has priority without notice over attaching or other creditors of the assignor. 5 Corpus Juris, 971–973.

The first assignee should have priority unless for some reason it is estopped. The assignment of a chose in action is valid and complete, and title to it passes, before any notice is given to the obligor. *Greey* v. *Dockendorff*, 231 U. S. 513; *Putnam* v. *Story*, 132 Mass. 205; *Thayer* v. *Daniels*, 113 Mass. 129; *Fortunato* v. *Patten*, 147 N. Y. 277; *In re Hawley Furnace Co.*, 238 Fed. 122; *Petition of National Discount Co.*, 272 Fed. 570. Whether legal or equitable, some title passes,—all that the assignor has power to give.

In Massachusetts, in the absence of estoppel, the claim of the first assignee will prevail against that of a subsequent assignee regardless of notice to the obligor. *Thayer* v. *Daniels*, 113 Mass. 129; *Putnam* v. *Story*, 132 Mass.

205; *Herman* v. *Mutual Life Ins. Co.*, 218 Mass. 181; *Rabinowitz* v. *People's Natl. Bank*, 235 Mass. 102.

Since the contracts of assignment were made and to be performed in Massachusetts, and since all parties, except the Finance Company, were Massachusetts corporations, and since the forum was a Massachusetts forum, the law of Massachusetts must govern all the questions involved. The fact that the Finance Company was a Delaware corporation does not give it the right to demand the application of the law of some other geographical unit. *Horn Silver Mining Co.* v. *New York*, 143 U. S. 305; *Shaffer* v. *Carter*, 252 U. S. 37.

The court below erroneously held that the relative merits of the equities of successive assignees of the same chose in action was a question of general jurisprudence and that, consequently, the federal courts were not bound by decisions of the state court in determining the territorial law of Massachusetts.

The federal decisions relied on by the majority of the court below and by the Finance Company do not justify this Court in approving the naked rule of mere priority of notice. *Methven* v. *Staten Island Light Co.*, 66 Fed. 113; *In re Leterman, Becher & Co.*, 260 Fed. 543; *Judson* v. *Corcoran*, 17 How. 612; *Spain* v. *Hamilton's Admr.*, 1 Wall. 604; *Laclede Bank* v. *Schuler*, 120 U. S. 511; *Dearle* v. *Hall*, 3 Russ. 1; *Farmers' & Merchants' Bank* v. *Farwell*, 58 Fed. 633; *The Elmbank*, 72 Fed. 610; *Third National Bank* v. *Atlantic City*, 126 Fed. 413; and *In re Hawley Furnace Co.*, 233 Fed. 451, distinguished. See *Foster* v. *Cockerell*, 3 Cl. & F. 456; *Ward* v. *Duncombe*, [1893] A. C. 369. The weight of authority in the various state courts, and also the weight of federal decisions, are against this rule. *Greey* v. *Dockendorff*, 231 U. S. 513; *Petition of National Discount Co.*, 272 Fed. 570.

State court decisions control federal courts as to assignments and pledges or choses in action and as to chattel

mortgages, conditional sales and liens; as to real estate, wills, descent and distribution; as to construction of state constitutions and statutes; as to liability for personal injury; and as to miscellaneous contracts. [Citing many decisions of this and of lower federal courts.]

The denial of certiorari in *In re Leterman, Becher & Co.*, 260 Fed. 543, adds nothing to the authority of that case. *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U. S. 251. See *Coleman & Co.* v. *Tawas Co.*, 250 U. S. 668; and *Benedict* v. *Ratner*, 259 U. S. 579.

Mr. Robert G. Dodge, with whom *Mr. Laurence Curtis 2d* was on the brief, for respondents.

The fact that the International Trust Company, which, like the plaintiff, is a Massachusetts corporation, was made a party defendant, did not prevent the removal of the case. It was in no sense a necessary party, as it had no concern whatever with the outcome of the controversy between the plaintiff and the Finance Company. A final decree in favor of plaintiff would naturally run against the Finance Company only, requiring that company to draw a check on the account in favor of the plaintiff. The Trust Company is a mere debtor of the Finance Company, and the fact that the deposit stands in the name of the latter as trustee does not change the relation. *In re Nichols*, 166 Fed. 603; *Minard* v. *Watts*, 186 Fed. 245; *Fletcher* v. *Sharp*, 108 Ind. 276; *Paul* v. *Draper*, 158 Mo. 197; Perry, Trusts, 6th ed., § 122.

It is settled that the citizenship of a merely nominal party is immaterial upon the question of removability on the ground of diverse citizenship. *Walden* v. *Skinner*, 101 U. S. 577; *Barney* v. *Latham*, 103 U. S. 205; *Bacon* v. *Rives*, 106 U. S. 99; *Ex parte Nebraska*, 209 U. S. 436; *Niles-Bement-Pond Co.* v. *Iron Moulders Union*, 254 U. S. 77; *New York Construction Co.* v. *Simon*, 53 Fed. 1; *Shattuck* v. *North British Ins. Co.*, 58

Fed. 609; *American National Bank* v. *National Benefit & Casualty Co.*, 70 Fed. 420; *First National Bank* v. *Bridgeport Trust Co.*, 117 Fed. 969; *Harvey* v. *Harvey*, 290 Fed. 653.

On the question of priority as between the assignees, the English rule, that the party who first gives notice is entitled to priority, is the established rule in the federal courts. *Judson* v. *Corcoran*, 17 How. 612; *Spain* v. *Hamilton's Admr.*, 1 Wall. 604; *Laclede Bank* v. *Schuler*, 120 U. S. 511; *Farmers' & Merchants' Bank* v. *Farwell*, 58 Fed. 633; *Methven* v. *Staten Island Light Co.*, 66 Fed. 113; *The Elmbank*, 72 Fed. 610; *Third National Bank* v. *Atlantic City*, 126 Fed. 413; *In re Hawley Furnace Co.*, 233 Fed. 451; *In re Leterman, Becher & Co.*, 260 Fed. 543. Distinguishing, *Petition of the National Discount Co.*, 272 Fed. 570; *Greey* v. *Dockendorff*, 231 U. S. 513. See further: *Fortunato* v. *Patten*, 147 N. Y. 277; *Graham Paper Co.* v. *Pembroke*, 124 Cal. 117; *Lambert* v. *Morgan*, 110 Md. 1; *Lumber Co.* v. *Newcomb*, 79 Miss. 462; *Jenkinson* v. *New York Finance Co.*, 79 N. J. Eq. 247; *Jack* v. *National Bank*, 17 Okla. 430; *Phillips's Estate*, 205 Pa. St. 515; *Coffman* v. *Liggett*, 107 Va. 418; Pomeroy, Eq. Juris., 4th ed., § 695, note J; 66 L. R. A. 761; 5 Corp. Jur. 953; 19 Yale Law Jour. 258, 263; 60 Univ. of Penna. Law Rev. 668, 669.

Dearle v. *Hall*, 3 Russ. 1; *Foster* v. *Cockerell*, 3 Cl. & F. 456; *Meux* v. *Bell*, 1 Hare, 73; Story, Eq. Juris., § 1384. In the federal courts, and in the state courts which follow *Dearle* v. *Hall*, *supra*, the rule is stated and applied without being limited to cases where the second assignee made inquiry or was in fact misled. See the cases and text writers above cited, and also *Lambert* v. *Morgan*, 110 Md. 1; Scott's Cases on Trusts, p. 623.

The question is one of general jurisprudence on which the federal court is not controlled by decisions of the state court. *Methven* v. *Staten Island Light Co.*, 66 Fed.

113; *In re Leterman, Becher & Co.*, 260 Fed. 543; *Swift* v. *Tyson*, 16 Pet. 1.

The rights of owners of choses in action have been constantly dealt with by the federal courts as matters of "general jurisprudence." The question whether a transferee of a negotiable instrument is entitled to rank as a holder for value is such a question. *Swift* v. *Tyson, supra; Oates* v. *National Bank*, 100 U. S. 239; *Railroad Co.* v. *National Bank*, 102 U. S. 14.

So of the right of a purchaser of municipal bonds to rely upon recitals therein, *Presidio County* v. *Noel-Young Bond Co.*, 212 U. S. 58; of the validity of the assignment of an insurance policy, *Russell* v. *Grigsby*, 168 Fed. 577; *New York Life Ins. Co.* v. *Dunlevy*, 214 Fed. 1; of whether the title to checks deposited in a bank passes to the bank in the absence of agreement, *In re Jarmulowsky*, 249 Fed. 319; *In re Grocers Baking Co.*, 266 Fed. 900; of whether an instrument purporting to effect an absolute transfer of title may be shown to have been intended as security only, *Russell* v. *Southard*, 12 How. 139; of the rights of a holder of an insurance policy issued before the payment of the first premium, *MacKelvie* v. *Mutual Benefit Life Ins. Co.*, 287 Fed. 660. See *Aetna Life Ins. Co.* v. *Moore*, 231 U. S. 543; *Myrick* v. *Michigan Central R. R. Co.*, 107 U. S. 102; *Harper* v. *Hochstim*, 278 Fed. 102; *Johnson* v. *Norton Co.*, 159 Fed. 361.

MR. JUSTICE BUTLER delivered the opinion of the Court.

On May 16, 1919, the Nelson Blower & Furnace Company, a Massachusetts corporation, assigned to the petitioner for a valuable consideration indebtedness to the amount of $45,000 due or to become due to the Nelson Company from the Murray & Tregurtha Corporation, under a contract whereby the Nelson Company was to construct certain engines for the latter. July 15, 1919,

the Nelson Company for a valid consideration assigned to the respondent, Manufacturers' Finance Company, the same indebtedness to the amount of $40,000, and on September 20 made another assignment to the Finance Company of the same indebtedness to the amount of $10,000. Later, about the last mentioned date, the Finance Company notified the debtor of its assignment. Up to that time it had made no inquiry of the debtor as to its indebtedness to the Nelson Company, and neither it nor the debtor had any knowledge of the prior assignment to the petitioner. September 26, 1919, the United States District Court in a suit in equity appointed a receiver of the Nelson Company. About that time each assignee learned of the assignment to the other. October 6, 1919, petitioner and respondent Finance Company agreed that the Nelson Company, acting by its receiver, should finish the work being done for the debtor, and that the net proceeds, which amounted to $7,963.36, a sum less than the amount of the claim of either assignee, should be deposited with the respondent International Trust Company, a Massachusetts corporation, in a special account in the name of the Finance Company as trustee for the one or the other of such assignees thereafter to be agreed by them, or found by some court of competent jurisdiction, to be entitled thereto. They failed to agree, and petitioner brought a bill in equity in the state court against the respondents to establish its right to the amount so on deposit, and to have the same paid to it. For the removal of the suit to the District Court of the United States, the Finance Company filed its petition stating that the International Trust Company is not a necessary party to the suit but is a mere nominal party, being only a stakeholder and without any interest whatever in the result, and that the controversy in the suit is entirely between citizens of different States, Salem Trust Company, a Massachusetts corporation, and the Manufacturers' Finance

Company, a Delaware corporation. Other proper steps were taken, and the case was removed from the state to the federal court. Petitioner moved to remand, asserting that the International Trust Company is a necessary party to the suit, and that the case was improperly removed, because the plaintiff and one of the defendants are citizens of the same State. The motion was denied. The case was tried in the District Court and dismissed on final decree which was affirmed by the Circuit Court of Appeals.

There are two questions for decision: Did the District Court have jurisdiction? Which of the parties is entitled to the fund?

The District Courts have original jurisdiction of controversies between citizens of different States (Constitution, Art. III, § 2; Judicial Code, § 24); and when in any suit brought in a state court, there is a controversy, which is wholly between citizens of different States, and which can be fully determined as between them, a defendant interested in such controversy may remove the suit to the proper District Court of the United States. Judicial Code, § 28. District Courts have jurisdiction if all the parties on the one side are of citizenship diverse to those on the other side.[1] Jurisdiction cannot be defeated by joining formal or unnecessary parties.[2] The right of removal depends upon the case disclosed by the pleadings when the petition therefor is filed, (*Barney* v. *Latham*,

[1] *Raphael* v. *Trask*, 194 U. S. 272, 277; *Gage* v. *Carraher*, 154 U. S. 656; *Ayres* v. *Wiswall*, 112 U. S. 187, 192; *Removal Cases*, 100 U. S. 457, 468–469; *Strawbridge* v. *Curtiss*, 3 Cranch, 267; *Chipman* v. *West United Verde Copper Co.*, 271 Fed. 91; *Danks* v. *Gordon*, 272 Fed. 821, 824.

[2] *Wormley* v. *Wormley*, 8 Wheat. 421, 451; *Wood* v. *Davis*, 18 How. 467, 469; *Walden* v. *Skinner*, 101 U. S. 577, 589; *Wilson* v. *Oswego Township*, 151 U. S. 56, 64; *Geer* v. *Mathieson Alkali Works*, 190 U. S. 428, 435; *Wallin* v. *Reagan*, 171 Fed. 758, 763; *Jackson* v. *Jackson*, 175 Fed. 710, 716; *Atchison, T. & S. F. Ry. Co.* v. *Phillips*, 176 Fed. 663, 666.

103 U. S. 205, 215; *Ex parte Nebraska*, 209 U. S. 436, 444) and is not affected by the fact that one of the defendants is a citizen of the same State as the plaintiff, if that defendant is not an indispensable party to the controversy between plaintiff and defendant who are citizens of different States. *Barney* v. *Latham, supra*, 213. The facts set forth in the present bill are substantially those already stated. This suit involves a controversy between the petitioner, a citizen of Massachusetts, and the respondent, the Finance Company, a citizen of Delaware, which can be determined without affecting any interest of the other respondent, the International Trust Company, a citizen of Massachusetts. The latter is not an indispensable party. See *Niles-Bement Co.* v. *Iron Moulders Union*, 254 U. S. 77, 80. It has no interest in the controversy between the petitioner and the other respondent. Its only obligation is to pay over the amount deposited with it when it is ascertained which of the other parties is entitled to it. On the question of jurisdiction, an unnecessary and dispensable party, will not be considered. *Walden* v. *Skinner*, 101 U. S. 577, 589; *Bacon* v. *Rives*, 106 U. S. 99, 104; *Ex parte Nebraska, supra*. The cases of *Wilson* v. *Oswego Township*, 151 U. S. 56, and *Construction Co.* v. *Cane Creek*, 155 U. S. 283, do not support the contention that this case was not properly removed to the federal court. These cases hold that where the object of the suit is to recover possession of personal property the one in possession is a necessary and indispensable, and not a formal, party. Here, no cause of action exists against the International Trust Company, because it has not been determined which of the other parties is entitled to payment. The District Court had jurisdiction. The motion to remand was rightly denied.

As between successive assignees of the same account receivable, does prior notice to the debtor of the later assignment without more subordinate the rights of the earlier to those of the later assignee?

There is a conflict of authority on the question. Under decisions of the Supreme Judicial Court of Massachusetts, which are in harmony with the decisions of the highest courts in a number of the States,[3] the earlier assignee would prevail. The courts below held the question to be one of general jurisprudence, declined to be bound by the Massachusetts decisions, and followed what they understood the rule to be, as applied by this and other federal courts,[4] and in a number of the States,[5] and decided that the later assignee, the first to give notice to the debtor, is entitled to the money.

The question is one of general law, not based on any legislation of the State or local law or usage, and the

[3] *Putnam* v. *Story*, 132 Mass. 205, 211; *Tingle* v. *Fisher*, 20 W. Va. 497, 506, 510; *Meier* v. *Hess*, 23 Ore. 599, 603; *Columbia Finance & Trust Co.* v. *First National Bank*, 116 Ky. 364, 375; *Fortunato* v. *Patten*, 147 N. Y. 277, 283; *Hawk* v. *Ament*, 28 Ill. App. 390, 394; *Harris County* v. *Campbell*, 68 Tex. 22, 29; *White* v. *Wiley*, 14 Ind. 496; *Maybin* v. *Kirby*, 4 Richardson (S. C.) 105, 114. See also *Thayer* v. *Daniels*, 113 Mass. 129, 131; *Herman* v. *Mutual Life Ins. Co.*, 218 Mass. 181, 186. *Rabinowitz* v. *People's National Bank*, 235 Mass. 102; *MacDonald* v. *Kneeland*, 5 Minn. 352, 361, 365; *Bellingham Bay Boom Co.* v. *Brisbois*, 14 Wash. 173, 176; *Trust Co.* v. *Krouse*, 22 Ohio C. C. (N. S.) 216; *Houser* v. *Richardson*, 90 Mo. App. 134, 139.

[4] *Judson* v. *Corcoran*, 17 How. 612; *Spain* v. *Hamilton's Administrator*, 1 Wall. 604; *Laclede Bank* v. *Schuler*, 120 U. S. 511; *Farmers' & Merchants' Bank* v. *Farwell*, 58 Fed. 633; *Methven* v. *Staten Island Light, Heat & Power Co.*, 66 Fed. 113; *In re Leterman, Becher & Co.*, 260 Fed. 543.

[5] *Graham Paper Co.* v. *Pembroke*, 124 Cal. 117, 120; *Lambert* v. *Morgan*, 110 Md. 1, 26; *Jenkinson* v. *New York Finance Co.*, 79 N. J. Eq. 247, 257; *Jack* v. *National Bank*, 17 Okla. 430, 435; *Phillips's Estate*, 205 Pa. St. 515, 521; *Vanbuskirk* v. *Hartford Fire Insurance Co.*, 14 Conn. 141, 144; *Dillingham* v. *Insurance Co.*, 120 Tenn. 302, 309; *Bank* v. *Insurance & Trust Co.*, 17 App. D. C. 112, 124; *Ward & Co.* v. *Morrison*, 25 Vt. 593, 599. See also *Merchants & Mechanics Bank* v. *Hewitt*, 3 Iowa, 93, 102; *Lumber Co.* v. *Newcomb*, 79 Miss. 462, 466; *Perkins* v. *Butler County*, 44 Nebr. 110, 116.